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BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF LIVING RIVERS TO APPEAL THE DECISION BY THE DIVISION OF OIL, GAS AND MINING TO APPROVE THE APPLICATION OF EARTH ENERGY RESOURCES TO CONDUCT TAR SANDS MINING AND RECLAMATION OPERATIONS AT THE PR SPRINGS MINE	**OPPOSITION MOTION TO EER'S AND THE DIVISION'S MOTIONS *IN LIMINE* AND MOTIONS TO STRIKE PRE-FILED TESTIMONY** **Docket No. 2010-027** **Cause No. M/047/0090 A**

Living Rivers submits this Motion in Opposition asking that the Board of Oil, Gas and Mining deny EER's and the Division's Motions *In Limine* and Motions to Strike Pre-Filed Testimony.

Introduction

EER argues that "much" of Living Rivers' pre-filed testimony is irrelevant to determining whether the Division of Oil, Gas & Mining (Division) erred in approving the Earth Energy Resources (EER) Notice of Intent (NOI) and thereby allowing the company to conduct mining operations at the PR Spring site. EER seeks to strike the expert testimony that involves the adequacy findings of the Utah Division of Water Quality (DWQ) that the PR Spring mining operation "should" have "de minimis" impact on groundwater quality and would qualify for permit-by-rule status pursuant to DWQ regulations. EER and the Division argue that "the

correctness of the DWQ decisions are not a proper subject of this hearing and evidence and expert opinions to that effect are not within the purview, jurisdiction, and expertise of this Board." Division Motion at 1-2. Aside from the Division's arguments, EER also argues that Norris is not qualified to discuss Material Safety Data Sheets (MSDS) and the toxicity of chemicals and that his conclusions concerning these data sheets and the toxicity of chemicals is not "rebuttal" testimony.

For several reasons, these contentions are without merit. First, as a general matter, preventing the presentation of evidence is risky and will open this Board's decision to successful appeal and remand. Should a reviewing court find that the evidence should have been allowed, that court will likely remand the decision and require the Board to revisit the entire matter on the basis of the additional evidence. A better course of action is to allow the presentation of evidence and to give the evidence its appropriate weight according to its relevance to the present inquiry.

Second, and more specifically, Living Rivers agrees that DWQ's decision to approve the permit-by-rule status for EER's operations should not be before the Board. However, given that, to meet its regulatory responsibilities, the Division relies almost exclusively on the findings DWQ made while reviewing the permit-by-rule application, and given that the Division did not independently assess these findings or the basis for them, the appropriateness and adequacy of DWQ's determinations and the Division's dependence on them must be part of this Board's review. Third, expert testimony addressing the sufficiency and accuracy of EER's permit-by-rule submission, which the company references and incorporates throughout the NOI and attaches as an appendix to that document, is completely suitable for Board review given the extent of EER's reliance on the assertions in this submission. This is relevant because much of the testimony EER seeks to strike deals with the defects contained with EER's permit-by-rule submission. Fourth, close examination of the specific citations to the expert testimony EER

seeks to strike shows that the testimony does not do what EER and the Division say it does – go to the merits of DWQ's de minimis determination. Therefore, the testimony does not fall under the category of expert opinion that the company and the agency believe should be struck from consideration by this tribunal.

Fifth, Norris is well-qualified to discuss MSDS and similar materials, because determining the toxicity of chemicals, for example, in soils, has been central to the modeling and implementation of remediation projects on which Norris has worked for the last twenty five years. Additionally, much of his testimony concerns technical data such as the vapor density and fluid density of compounds, and these types of physical measurements are at the core of a hydrogeologist's work related to multiphase fluid flow. In any case, if we follow EER's argument on this matter, then no witness at the hearing and no contributor to the NOI is qualified to discuss the toxicity of EER's process chemicals, or the MSDS sheets that the company has submitted as exhibits. The end result of that would be that the environmental impacts of the extraction chemical would remain completely unresolved. Finally, Norris' testimony is clearly appropriate on rebuttal because, as EER acknowledged in an to email, Living Rivers did not receive the company's MSDS sheets, which EER introduces as exhibits, until January 11, 2011, after Living Rivers had already filed its January 7th expert testimony. *See* email from Davis to Dubuc, attached.

Living Rivers' Pre-filed Testimony is Highly Relevant to Whether the Division Complied with Applicable Laws and Regulations.

Initially, it is important to distinguish between the two types of DWQ actions that pertain to the present inquiry: the application of its regulations to the mine, and the actual findings made by DWQ. In applying its regulations, DWQ decided that the PR Spring mining operation was eligible for a permit-by-rule groundwater permit under Utah Admin. Code R317-6-6.2.A(25). Living Rivers agrees that whether DWQ was correct in making this permitting decision is not

reviewable by this Board. In other words, whether DWQ properly applied R317-6-6.2.A(25) to the PR Spring mine is not a subject for this Board to address.

However, in the course of analyzing EER's Permit-By-Rule submission, DWQ made several findings upon which the Division heavily relied in meeting its own regulatory responsibilities. For example, DWQ determined that:

- "Based on Material Safety Data Sheets [MSDS] and other information that [EER] sent to DWQ in January 2007, the reagent to be used for bitumen extraction is generally non-toxic and volatile, and most of it will be recovered and recycled in the extraction process."
- "Processed tailings will not be free-draining and will have moisture content in the 10 to 20 percent range. The tailings will not contain any added constituents that are not present naturally in the rock, other than trace amounts of the reagent used for bitumen extraction."
- "Analysis of processed tailings using the Synthetic Precipitation Leachate Procedure [SPLP] indicates that leachate derived from the tailings by natural precipitation would have non-detectable levels of volatile and semi-volatile organic compounds."
- "Analytical results indicated that TCLP [Toxicity Characteristic Leaching Procedure] metals would not be leached from the tailings at detectable levels[.]"
- "[T]he proposed mining and bitumen extraction operation should have a *de minimis* potential effect on ground water quality[.]"

As discussed below, the fact that the Division relied almost exclusively on these findings in its efforts to meet its regulatory obligations on matters outside of issues related to ground water quality makes these DWQ determinations very much a subject of Board review.

For example, the testimony of Division staff shows that none of the staff reviewed the Material Safety Data Sheets (MSDS) with any rigor, and none had the expertise to understand or apply the information in these documents to the proposed mining operation. This testimony also shows that Division staff relied completely on DWQ to interpret the sheets. Yet, at the same time, independently reviewing, deciphering and applying the MSDS sheets is central to the

ability of the Division to meet its regulatory mandate. Specifically, unless it is able to determine the degree to which the process chemicals used by EER are deleterious in nature, and unless it is able to understand how these materials should be described or treated, there is simply no way that the Division can meet its regulatory obligations. *See* Utah Admin. Code R647-4-106(2); R647-4-110(4). Similarly, without an adequate assessment of the MSDS sheets, there is no way that the Division can secure from EER the adequate descriptions and mitigation measures it needs to address the potential impacts of mining operations on groundwater, surface water, soils and soil stability, air quality and public health and safety. Utah Admin. Code R647-4-109(1), (3) (4) & (5).

Therefore, to the degree that the Division did not review and apply the MSDS sheets and other materials submitted as part of DWQ's permit-by-rule determination in order to ensure compliance with Division regulations, and instead opted to rely on DWQ for this analysis, DWQ's findings must be subject to Board review. If such a review is not allowed, the Division will be in a position to isolate its regulatory actions from administrative review in a way that contravenes Utah law. *E.g.* Utah Code Ann. § 63G-4-403(4)(g) (reviewing court will overturn an agency action "based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court").

To the Extent that the Division Relied on DWQ's "de minimis" Findings to Meet the Division's Regulatory Obligations, Those Finding are Subject to this Board's Review.

Plainly, the Division and this Board have exclusive authority to enforce Utah's laws that require the reclamation of land during and after mining operations.[1] *E.g.* Utah Code Ann. § 40-

[1] "Reclamation" is defined as "the actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions." Utah Code Ann. § 40-8-4(26). Moreover, under Utah law, reclamation of mined lands is absolutely required. Utah Code Ann. § 40-8-12.5 ("Every operator shall be obligated to conduct reclamation and shall be responsible for the costs and expenses thereof.").

8-5(1)(a); § 40-8-5(1)(b) ("Any delegation of authority to any other state . . . division . . . or agency to administer any or all other laws of this state relating to mined land reclamation is withdrawn and the authority is unqualifiedly conferred upon the board and division as provided in this chapter."). This means that it is up to the Division and this Board to ensure, *inter alia*, compliance with the following regulations related to proposed large mining operation:

- EER "shall" provide a description of "the mining/processing methods to be used on-site" and "shall" identify "any deleterious or acid forming materials present or to be left on the site as a result of mining[.]" Utah Admin. Code R647-4-106(2).
- EER "shall" provide, "at a minimum," a description of "[p]rojected impacts to surface and groundwater systems" and its proposed actions "to mitigate any of the . . . impacts." Utah Admin. Code R647-4-109(1) & (5).
- EER "shall" provide, "at a minimum," a description of "[p]rojected impacts of the mining operation on existing soil resources" and its proposed actions "to mitigate any of the[se] . . . impacts." Utah Admin. Code R647-4-109(3) & (5).
- EER "shall" provide, "at a minimum," a description of "[p]rojected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety" and its proposed actions "to mitigate any of the[se] . . . impacts." Utah Admin. Code R647-4-109(4) & (5).
- EER "shall" provide "[a] description of the treatment, location and disposition of any deleterious [] materials generated and left on-site." Utah Admin. Code R647-4-110(4).

Thus, the Division is ultimately responsible and publicly accountable for guaranteeing the complete reclamation of the PR Spring site so that during and after mining operations it is in a safe and stable ecological condition and can fully support its use and value as wildlife habitat. *See* Utah Code Ann. § 40-8-12.5; § 40-8-4(26). To fulfill this responsibility, the Division is legally obligated to require from EER a description of, as well as the removal, isolation or neutralization of any "**potentially**" deleterious material, including the extraction chemicals EER plans to use at the PR Spring mine. See Utah Admin. Code R647-4-110(4); R647-4-111(4). The Division is also duty bound to secure from EER appropriate measures to protect affected

drainages and adequate descriptions and mitigation measures to address the potential impacts of the mining operations on groundwater, surface water, soils and soil stability, air quality and public health and safety. *See* Utah Admin. Code R647-4-109(1), (3) (4) & (5).

Of course, the fundamental goal of these descriptions, mitigations and removal is the comprehensive remediation of the site. In other words, without adequate description, mitigation and removal, true remediation is not possible and the adverse impacts of the mining operation on ecosystem values, water and soil resources and human health and safety are not eliminated as Utah law requires. *See* Utah Code Ann. § 40-8-4(26) (defining reclamation as "the actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions."); Utah Code Ann. § 40-8-12.5 (requiring reclamation).

Therefore, as the Division made clear, in meeting its obligations pursuant to R647-4-109, for example, it may rely on the "findings" that other agencies make, but it must "make an independent judgment as well." Therefore, according to the Division, it must "review the process" that other agencies "go through and the information that's supplied to those other agencies, as well as the final outcomes, the findings that the other agency would make." Baker Depo. at 24-25, ll 23-25, 1-8 & 20-24.[2]

Moreover, the Division staff also relies almost exclusively on the tests ordered by DWQ, DWQ's interpretation of those tests and DWQ's "de minimis" finding to meet several of its regulatory obligations, including ensuring that EER describe potential environmental impacts along with the proposed actions to mitigate those impacts. Baker Depo. at 19, ll 1-7; 47-48, ll

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[2] Mr. Baker also stated "I think each agency is independent, even though we work together, each agency has its own approval process and has to evaluate the information that's presented to it according to its own rules." In response to the question: "Do you rely on the assessment of, say the Division of Water Quality, in your determination that these aspects of [R647-4-]109 are being met," he answered "Again, we do to a degree, but we also make our own independent assessment." Baker Depo. at 24, ll 16-24.

19-25 & 1; Heppler Depo at 78, ll 7-10 & 17-20; 151, ll 2-5 (using term "trace" which came from DWQ "de minimis" finding);[3] 209, ll 1 (same); Monson Depo. at 261-62, ll 22-25, 1-2 & 8-13; 302, ll 5-18; 303, ll 1-7. Mr. Monson's answer to a question concerning the Material Safety Data Sheet (MSDS) provided by EER to describe the extraction chemicals is particularly striking in this regard:

5 Q. Did you look at it, the MSDS, in terms of
6 the possible impact on the environment for groundwater
7 runoff -- excuse me -- storm water runoff?
8 A. Not necessarily, no. I just -- I was
9 more interested in what it was and what its properties
10 were.
11 Q. Is that a concern that you have in terms
12 of --
13 A. No.
14 Q. Okay. Why would that not be?
15 A. Because of the analysis that the Division
16 of Water Quality did, where it was determined that it
17 would be in trace amounts, that it would be nontoxic,
18 nonhazardous to the environment.

Monson Depo. at 303, ll 5-18.

At the same time, Division staff admit that they undertook **no** independent analysis of DWQ's findings – particularly the findings that "the reagent to be used for bitumen extraction is generally non-toxic and volatile," that "processed tailings will not be free-draining and will have moisture content in the 10 to 20 percent range" or that the "tailings will not contain any added constituents that are not present naturally in the rock, other than trace amounts of the reagent used for bitumen extraction." Heppler Depo. at 78, ll 5-10; 151, ll 2-25; 153, ll 4-12; Monson Depo. at 258, ll 7-22; 261-62, ll 20-25 & 1-5; 303-304, ll 21-25 & 1-7. The Division staff relied either on DWQ or the NOI to make these critical conclusions. According to the testimony of the

[3] Heppler later confirmed that the notion that there would be a "trace" of the extraction chemical left in the processed ores came from the DWQ "de minimis" letter authored by Robert Herbert of that agency. Heppler Depo. at 211-213 (entire pages).

Division staff, the Division did not reach these judgments separately from these sources and did not independently verify any of these core determinations.

Thus, Living Rivers concurs that the Board should not address the merits of the DWQ decision that EER's operations qualify for a permit-by-rule status under the relevant DWQ regulation. However, it is plain that, to meet its own regulatory obligations, the Division relies heavily on findings DWQ made in reviewing the permit-by-rule request. As this reliance and these findings are at the core of determining whether the Division met its legal obligations when it approved the NOI, a full discussion of the adequacy of this reliance and these findings is relevant to this proceeding and should be presented.

Further, the Division relies on the DWQ findings to not only determine EER's compliance relative to ground water issues, but also relative to issues well outside the scope of DWQ's permit-by-rule determination. In other words, pursuant to its own regulations, the Division is required to ensure the proper identification of deleterious materials used in the PR Spring mining process, as well as ensuring that a proper description of the treatment, location and disposition of any deleterious materials generated and left on-site is secured. As evidenced above, the Division did not independently assess the extraction chemical or its impacts on the environment and did not calculate the concentration at which it would be disposed of in the waste dumps or mine back fill. This means that, in completing its regulatory duties, the Division either based its conclusions on DWQ – outside the scope of the proper application of the permit-by-rule regulation – or on EER itself. In any case, the Division did not independently address these findings or the foundations for them. As a result, it is apparent that the appropriateness and adequacy of DWQ's determinations, and the Division's dependence on them, are proper subjects for this Board's review. These matters go to the very core of determining, by relying on DWQ's ground water impact determination, the Division met its legal obligations to resolve a host of

other environmental questions and whether the Division was justified in failing to independently verify either DWQ's or EER's assertions.

Therefore, based on the above, EER's and the Division's contentions fall short and the Lips and Norris expert reports filed on behalf of Living Rivers should be accepted in full.

To the Extent that the Division Relied on the Permit-By-Rule Submission, that Submission and Finding are Subject to this Board's Review.

In the NOI, EER repeatedly refers to and relies on its Permit-By-Rule application to meet its obligations to describe the impacts of its operations and mitigation measures to address the impacts on groundwater, surface water, soils and soil stability, air quality and public health and safety as required by the Division's rules. *See* EER NOI at 17 (stating that "process flow details" are described "in greater detail" in the Permit-By-Rule request, attached as Appendix B to the NOI); at 17 (stating that the "subject" of "process chemical storage and handling" is described "in greater detail" in the Permit-By-Rule request, attached as Appendix B to the NOI); at 19 (stating that the "nature" of "pit backfill" is described "in greater detail" in the Permit-By-Rule request, attached as Appendix B to the NOI); at 30 (stating that "depth to ground water" is also discussed in the Permit-By-Rule request, attached as Appendix B to the NOI); at 32 (stating in its discussion of "ore and waste stockpiles" that EER "has received Permit-by-Rule coverage under DWQ's Groundwater Protection Program, due to the de minimus [sic] impact of the project, including the planned pit backfills with processed tar sands, on groundwater resources"); at 38 (stating same in its discussion of groundwater).

Thus, the adequacy of the Permit-By-Rule submission and the Division's reliance on it are squarely before the Board. This is relevant because much of the testimony EER and the Division seek to strike provides expert testimony on the adequacy of the Permit-By-Rule submission and the arbitrariness of the Division to rely upon that submission in its attempt to meet its regulatory mandate. Therefore, to the extent that these expert reports address the

adequacy of the Permit-By-Rule determination and the Division's reliance on it, the Lips and Norris expert reports should be accepted as filed.

The Testimony EER and the Division Seek to Strike Does Not Deal with the "Correctness of the DWQ Decisions" and Therefore is Properly Before the Board.

EER and the Division attempt to make global and general asserts about Living Rivers' proffered testimony, rather than citing specific references to those specific portions of the testimony it moves to strike. In other words, claims about the irrelevance of "much" of the testimony are inappropriate. Regardless, to the extent that EER identifies particular aspects of the testimony it seeks to strike, the company's arguments are unavailing. For example, with regard to the testimony of Norris, EER cites with specificity only the following pages as being irrelevant to the present inquiry: 1) from the January 7th testimony, pages 21-25; and, 2) from the February 15th testimony, pages 9-10, 16-18, 41 and 44.[4]

Initially, in the January 7th expert testimony of Norris, pages 21-25 deal exclusively with the adequacy of the Permit-By-Rule submission. For example, Norris points out that the test results that formed the basis for that submission were invalid because the samples were not subject to proper protocols. Moreover, Norris asserts that the tests did not reveal the types of information that would allow the Division to meet its regulatory obligations relative to the PR Springs mine. Similarly, in the February 15th testimony, pages 9-10, 16-18, 41 and 44 are a direct response to EER's release of information on the composition of the extraction chemical that EER proposed to use at the PR Spring mine. As discussed above, EER first released this information to Living Rivers on January 11, 2011. Moreover, Norris' only references to DWQ speak of the "DWQ submission" which is the Permit-By-Rule submission or refer to the NOI and DWQ simultaneously. Therefore, none of these passages relates to the adequacy of the

[4] Thus, as an initial matter, consideration of the alleged irrelevancy of this testimony should be restricted to these pages and those cited in the context of the Lips expert testimony.

DWQ decisions, but rather to the extraction chemical itself, the Permit-By-Rule determination or the NOI. All of these matters are properly before the Board.

Similarly, EER points with particularity only to the following supposedly irrelevant testimony from Lips: 1) from the January 7th testimony, pages 37-38; and, 2) from the February 15th testimony, pages 14, 23-25. As with the Norris testimony, in Lips' January 7th expert testimony, pages 37-38, deals largely with the adequacy of the Permit-By-Rule submission. Lips also underscores the fact that the information which served as the basis for the Permit-By-Rule submission, as well as the subsequent DWQ findings, was out-of-date and has since been rewritten. As a result, he concluded, the DWQ findings were inaccurate because they were not grounded on current information about the EER mining plan and process. In his February 15th testimony, on page 14, Lips addresses whether the Division arbitrarily relied on DWQ's permit-by-rule determination, a matter which is the proper province of this Board. Finally, in his testimony on pages 23 to 25, Lips gives his expert assessment of the content of the letter which EER sent to DWQ on February 8, 2011, explaining significant changes that the company had made to its mining plan and process since DWQ made its 2008 Permit-by-Rule determination. Because EER submitted this letter as an exhibit, Lips testimony on its content, accuracy and sufficiency is highly relevant to this proceeding.

Thus, because the relevant testimony largely concerns the adequacy of the Permit-By-Rule submission and the Division's reliance on this submission, this testimony is relevant to the present matter and should be accepted in full.

Norris is Highly Qualified to Opine on the Toxicity of the Extraction Chemical and Provide Summaries of MSDS and Related Material.

EER argues that Norris, as a "Licensed Professional Geologist," is not qualified to give his opinion on the toxicity of the extraction chemical or to provide summaries of the MSDS sheets and related information. As an initial matter, EER's contention would disqualify any

individual associated with the NOI from giving an opinion on these matters. This includes the author of the Permit-By-Rule submission, who is a "Licensed Professional Geologist" as well as the individual that signed the DWQ "de minimis" letter, who is also a professional geologist. Therefore, if this Board were to strike the testimony of Norris in this regard, it would also be compelled to strike any portions of the NOI and Permit-By-Rule relating to the toxicity of the extraction chemical along with the DWQ "de minimis" finding. Moreover, Living Rivers would move to strike any reference to any MSDS and to strike the MSDS exhibits as well, for lack of foundation.

In any case, Norris is well-qualified to discuss MSDS and similar materials, because determining the toxicity of chemicals, for example, in soils, has been central to the modeling and implementation of remediation projects on which Norris has worked for the last twenty five years. Additionally, much of his testimony concerns technical data such as the vapor density and fluid density of compounds, and these types of physical measurements are at the core of a hydrogeologist's work related to multiphase fluid flow. Regardless, Norris does not "make" toxicity determinations, but merely points out toxicity information that is provided by highly credible sources. Plainly, as Norris routinely uses MSDS and related materials in the scope of his work, he is qualified to explain the content of these sources of information and the impact that information should have on decisions like those the Division is required to make pursuant to its own regulations. Finally, if the Board has any doubt as to Norris' expertise in these matters, Living Rivers respectfully asks for the opportunity at the hearing to prove that he is amply qualified.

Norris' Expert Opinions on Chemical Toxicity and MSDS are Appropriate as Rebuttal Testimony.

EER is wrong to argue that Norris' February 15, 2011 Rebuttal Testimony wrongly included his expert opinion on chemical toxicity of the process chemicals as well as his analysis

and discussion of material found on MSDS sheets and similar materials. EER's assertions are invalid because, as EER is fully aware, Living Rivers was not informed of the composition of the extraction chemical that EER proposes to use at the PR Spring mine until January 11, 2011, after Living Rivers had already filed its initial expert testimony on January 7, 2011. In that January email, attached as an exhibit to this memorandum, EER stated:

> I sincerely apologize for my confusion on the MSDS for the D-Limonene (orange terpene). I thought we had provided that to WRA back in the first informal conference. The MSDS we objected to provide pertained to a stabilizer that was originally identified as a component of the process but which is no longer going to be used. I've attached MSDS sheets from two of the manufacturers of the D-Limonene product.

Only with this email did Living Rivers secure the identity of and access to the MSDS on the extraction chemical proposed for use at the PR Spring mine.

EER's claim that a May 29, 2009 letter from the company to the U.S. Environmental Protection Agency had been part of the record since and available to the public is erroneous. That is because the crucial information in that letter – the make up of the extraction chemical – was redacted or blacked out of the public record. This means that no member of the public, including Living Rivers, could glean this vital information from the NOI. Rather, it was not until the January 11, 2011 email from EER to counsel for Living Rivers that the organization was informed of the extraction chemical. As a result, EER's argument falls flat and the Norris Rebuttal Testimony should be accepted as filed.

For these reasons, Living Rivers respectfully asks asking the Board of Oil, Gas and Mining to deny EER's and the Division's Motions *In Limine* and Motions to Strike Pre-Filed Testimony.

Respectfully submitted this 22nd day of February, 2011.

ROB DUBUC
JORO WALKER
Attorneys for Living Rivers

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2011, I served a true and correct copy of this Motion in Opposition to EER's and the Division's Motions *In Limine* and Motions to Strike Pre-Filed Testimony via email to:

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ROB DUBUC

Rob Dubuc

From: John Davis <John.Davis@hro.com>
Sent: Tuesday, January 11, 2011 1:12 PM
To: Rob Dubuc
Cc: Chris Hogle; Steve Alder
Subject: RE: Living Rivers Hearing
Attachments: MSDS.pdf

Rob: Thank you for the quick response. I agree with you that we should see if the Board will put us first on the agenda. We can discuss that with Steve and the Board's counsel, Mike Johnson, as soon as we hear from you on your experts and Joro's jury duty issue.

Your suggested changes in the dates are fine with us.

I sincerely apologize for my confusion on the MSDS for the D-Limonene (orange terpene). I thought we had provided that to WRA back in the first informal conference. The MSDS we objected to provide pertained to a stabilizer that was originally identified as a component of the process but which is no longer going to be used. I've attached MSDS sheets from two of the manufacturers of the D-Limonene product.

Thanks again,

John

A. John Davis
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From: Rob Dubuc [mailto:rdubuc@westernresources.org]
Sent: Tuesday, January 11, 2011 12:34 PM
To: John Davis
Cc: Chris Hogle; Steve Alder
Subject: RE: Living Rivers Hearing

John:

We agree that under the circumstances moving to a different date makes sense. A couple caveats: As I mentioned in my email to Steve yesterday, Joro is attempting to get excused from jury duty the week of Feb 23rd. She's working on that now. I also need to confirm with both of my experts that they're available on that date. Otherwise, I agree that having it all on one day, and not at the end of a long day for the board, is to everyone's benefit. I would lobby for being first out the chute for the February hearing date, but I don't know it that's feasible.